

§ 66-94.1. Responsible sellers exemption.

(a) The provisions of Article 19 shall not apply to the sale or lease of any products, equipment, supplies or services where:

- (1) The seller has not derived net income from such sales within the State during either of its two previous fiscal years, and does not intend to derive net income from such sales during its current fiscal year; and
- (2) The primary commercial activity of the seller or its affiliate is substantially different from the sale of the goods or services to the purchaser, and the gross revenues received by the seller from all such sales during the current and each of the two previous fiscal years do not exceed ten percent (10%) of the total gross revenues from all operations for the same period of the seller and any other affiliated entity contractually obligated to compensate the purchaser for the purchaser's business activities arising from the sale; and
- (3) The sale results in an improvement to realty owned or leased by the purchaser which enables the purchaser to receive goods on consignment from the seller or its affiliate. An "improvement to realty" occurs when a building or other structure is constructed or when significant improvements to an existing building or structure are made; and
- (4) The seller has either a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than five million dollars (\$5,000,000) or has obtained a surety bond from a surety company authorized to do business in this State in an amount equal to or greater than the gross revenues received from the sale or lease of products, equipment, supplies or services in this State during the preceding 12-month period which enabled the purchaser to start a business.

(b) The provisions of Article 19 shall not apply to the sale or lease of any products, equipment, supplies, or services where:

- (1) The seller has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than five million dollars (\$5,000,000); and
- (2) The primary commercial activity of the seller is motor carrier transportation and the seller is subject to the jurisdiction of the Interstate Commerce Commission or any other federal agency that regulates motor carrier transportation.

(c) Any seller satisfying the requirements of subsections (a) or (b) of this section shall file with the Secretary of State two copies of a document signed under oath by the seller or one authorized to sign on behalf of the seller containing the following information:

- (1) The name of the seller and whether the seller is doing business as an individual, partnership, or corporation;
- (2) The principal business address of the seller;
- (3) A brief description of the products, equipment, supplies, or services being sold or leased by the seller; and
- (4) A statement which explains the manner in which each of the requirements of subsections (a) or (b) of this section are met. (1983, c. 421, s. 1; 1987, c. 325.)